

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

OSCAR F. TURNER-BEY, Register No. 168840,)
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Plaintiff,)
)
)
v.) No. 05-4384-CV-C-SOW
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DAVE DORMIRE, et al.,)
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)
)
Defendants.)

REPORT, RECOMMENDATION AND ORDER

Plaintiff Oscar F. Turner-Bey, an inmate confined in a Missouri penal institution, brought this case under the Civil Rights Act of 1871, 42 U.S.C. § 1983, and its corresponding jurisdictional statute, 28 U.S.C. § 1343. This case was referred to the undersigned United States Magistrate Judge for processing in accord with the Magistrate Act, 28 U.S.C. § 636, and L.R. 72.1.

Although plaintiff was originally granted leave to proceed on his claims against defendant C. Dorsey, further examination of the record reflects that plaintiff's claims against such defendant should be dismissed for failure to state a claim under 42 U.S.C. § 1983. Section 1983 allows for a cause of action against a person who, under color of state law, denies a citizen of any rights, privileges, or immunities secured by the Constitution and laws. Color of state law is defined as generally applying to public employees acting in their official capacities or while exercising their responsibilities pursuant to state law. West v. Atkins, 487 U.S. 42, 50 (1988). As a prisoner confined within the Missouri Department of Corrections, C. Dorsey is not a proper defendant in a 42 U.S.C. § 1983 action.

Based on the foregoing, plaintiff's motion for service of process on defendant C. Dorsey will be denied.

IT IS, THEREFORE, ORDERED that plaintiff's motion for service of process on defendant C. Dorsey is denied [12]. It is further

RECOMMENDED that plaintiff's claims against defendant C. Dorsey be dismissed, pursuant to 28 U.S.C. § 1915A, for failure to state a claim.

Under 28 U.S.C. § 636(b)(1), the parties may make specific written exceptions to this recommendation within twenty days. The District Judge will consider only exceptions to the specific proposed findings and recommendations of this report. Exceptions should not include matters outside of the report and recommendation. Other matters should be addressed in a separate pleading for consideration by the Magistrate Judge.

The statute provides for exceptions to be filed within ten days of the service of the report and recommendation. The court has extended that time to twenty days, and thus, additional time to file exceptions will not be granted unless there are exceptional circumstances. Failure to make specific written exceptions to this report and recommendation may result in a waiver of the right to appeal. See L.R. 74.1.

Dated this 10th day of March, 2006, at Jefferson City, Missouri.

/s/ William A. Knox

WILLIAM A. KNOX
United States Magistrate Judge